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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/649,490 | 08/27/2003 | Patricia L. Herzog-Mesrobian | 773.003 | 5870 |

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| EXAMINER |
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GELLNER, JEFFREY L

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| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|--|-------------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/649,490 | | HERZOG-MESROBIAN ET AL. | |
| | Examiner | | Art Unit | |
| | Jeffrey L. Gellner | | 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 16-27, 29-33, 36, 57, 59-70 and 72-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-27, 29-33, 36, 57, 59-70 and 72-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The Declaration of Patricia L. Herzog-Mesrobian filed on 17 January 2006 under 37 CFR 1.131 is sufficient to overcome the Gilbert reference and any rejections using that reference. However, this Declaration is not sufficient to overcome the rejections with Rusert et al. because this reference qualifies as 102(b) art and a 1.131 declaration can not overcome a rejection with 102(b) art (see MPEP 715 I).

Claim Objections

Claim 7 is objected to because of the following informality:

In claim 7, line 2, the first occurrence of "the film" lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8, 9, 16-18, 23-25, 29, 27, 31, 32, 76, and 77 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1).

As to claims 1, 29, 76, and 77, Herzog-Mesrobian et al. discloses an apparatus Figs. 1-43) for containing a plant comprising a sleeve (Figs. 1-5 and 22-24); a means for securing the sleeve to a vessel (friction fit from fabric used at col. 3 lines 7-10); and a second layer (col. 3 lines 7-20). Not disclosed is a means for applying ornamentation to the sleeve the means for applying being adhesive or stitching, the ornamentation by placing another layer over the sleeve, and the ornamentation including text. Rusert et al., however, discloses an apparatus that is capable of containing a pot (see Figs. 1 and 2) with means for applying ornamentation ("label or band" of col. 3 lines 14-20) that is adhesive or stitching (col. 3 lines 14-20) and the ornamentation including text ("preprinted" of col. 3 lines 14-20). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Herzog-Mesrobian et al. by adding a ornamentation with a means of applying an ornamentation of text as disclosed by Rusert et al. so as to communicate emotion or advertisement to the consumer.

As to claims 2, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the means for securing as a fastener (74 of Fig. 5 of Herzog-Mesrobian et al.), , the sleeve is a stretchable mood fabric (from "lycra" of col. 3 lines 7-10 of Herzog-Mesrobian et al.), and the ornamentation being a user removable film ("thermoplastic band" of col. 10 lines 5-11 of Rusert et al. in that a user is capable of removing the label).

As to claims 3 and 4, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a pot or a saucer (Figs. 1 and 2 of Herzog-Mesrobian et al.).

As to claim 5, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a top portion (region around 70 of Fig. 5 of Herzog-Mesrobian et al.) and a bottom portion (72 of Fig. 2 of Herzog-Mesrobian et al.).

As to claims 8 and 9, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a sleeve with two ends and a zipper fastener (Fig. 22 of Herzog-Mesrobian et al.).

As to claim 16, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve stretchable in a direction (col. 2 lines 54-65 of Herzog-Mesrobian et al.).

As to claim 17, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve stretchable in two directions (col. 2 lines 54-65 of Herzog-Mesrobian et al.).

As to claim 18, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a second layer (col. 3 lines 7-20 of Herzog-Mesrobian et al.). Not disclosed is the second layer being a stretch layer. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. by adding a second stretchable layer so as to thicken and strengthen the sleeve depending the use of the sleeve.

As to claims 23-25, 27, the limitations of claim 76 are disclosed as described above. Not disclosed is the ornamentation a graphic or a logo or a holiday or a photo. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. by having the ornamentation a graphic or a logo or a holiday or a photo depending upon the information desired to convey to the consumer. .

As to claim 31, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a vessel made of clay (in that "standard sized" pots are clay of col. 2 lines 64-66 of Herzog-Mesrobian et al.).

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As to claims 32, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve fitting around a pot (Figs. 1 and 2 of Herzog-Mesrobian et al.).

Claims 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1) in further view of Saetre (US 5,102,171).

As to claim 6, the limitations of claim 1 are disclosed as described above. Not disclosed is the film ornamentation attached by static cling and is changed by owner depending upon occasion. Saetre, however, discloses a decorative film with static cling (col. 2 lines 44-47) that is changed by owner depending upon occasion (from "reusable non-adhesive design figure" of col. 1 lines 36-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. by using the static cling decoration of Saetre so as to have a multi-purpose, separable design decoration that can adhere to various surfaces (see Saetre at col. 1 lines 25-34).

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1) in further view of Bernardo (US 4,091,928).

As to claim 7, the limitations of claim 1 are disclosed as described above. Rusert et al. further disclose the ornamentation being a user removable film ("thermoplastic band" of col. 10 lines 5-11 of Rusert et al. in that a user is capable of removing the label). Not disclosed are the sleeve, means for securing, and film sold as a kit. Bernardo, however, discloses a planter

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capable of holding a flower pot that is sold as a kit (see abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. by selling as a kit as disclosed by Bernardo so that the consumer has all the parts and is given an instruction booklet for use and assembly (inherent to Bernardo).

Claims 10, 11, and 19-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1) and Bernardo (US 4,091,928) in further view of Saetre (US 5,102,171).

As to claims 10 and 19-21, the limitations of claim 7 are disclosed as described above. Not disclosed is the indicia conveying a message for a holiday, a special, emotional event. Saetre, however, discloses a message for a holiday (see Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert and Bernardo by having a holiday message as disclosed by Saetre so as to increase sales during that holiday season.

As to claim 11, the limitations of claim 10 are disclosed as described above. Not disclosed is the message a brand message. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert and Bernardo and Saetre by having the message a brand message depending upon what information is desired to convey to the customer.

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Claim 26 is rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1) in further view of Bakker (NL C 1005489).

As to claim 26, the limitations of claim 76 are disclosed as described above. Not disclosed is the ornamentation including a pocket to hold objects. Bakker, however, discloses ornamentation on a sleeve that includes a pocket (generally 5 of Fig.). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert by having a pocket as disclosed by Bakker so as to allow the user to add a gift.

Claim 30 is rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1) in further view of Osburg (US 411,873).

As to claim 30, the limitations of claim 76 are disclosed as described above. Not disclosed is the ornamentation including a dangling decoration. Osburg, however, discloses a sleeve with a dangling decoration (generally "c" or "tassels" of Fig.). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert by having tassels as disclosed by Osburg so as to create a specific aesthetic look.

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Claim 33, 36, 57, 59-70, 72, 73, and 75 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1) in further view of Holloway (GB 2213693 A).

As to claim 33, the limitations of claim 77 are disclosed as described above. Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve elastic (col. 2 lines 44-45 of Herzog-Mesrobian et al.). Not disclosed are overlapping fingers tabs used to secure the sleeve to the pot. Holloway, however, discloses a sleeve overlapping fingers tabs used to secure the sleeve to the pot (18a, 18b, 20a, and 20b of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert by using overlapping fingers tabs used to secure the sleeve to the pot as disclosed by Holloway so as to allow the sleeve to form a blank for ease of storage.

As to claim 36, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose the sleeve with horizontal inner lips at the upper and lower portions (70 and 72 of Figs. 2 and 5 of Herzog-Mesrobian et al.).

As to claim 57, the limitations of Claim 33 are disclosed as described above. Not disclosed is the sleeve holding pieces of the pot assembled condition and the method of repairing cracks by pulling away the sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway by using cracked pots so as to recycle material and to repair cracked pots so as to recycle material.

As to claim 59, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose the sleeve with a hoop direction and an axial direction and axial edges (Figs. 22-26 of Herzog-Mesrobian et al.).

As to claim 60-64, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose the sleeve stitched together (Fig. 22 of Herzog-Mesrobian et al.), releasably attached with a zipper (Fig. 23 of Herzog-Mesrobian et al.), and hook and loop (Fig. 24 of Herzog-Mesrobian et al.) with a liner (Fig. 25 of Herzog-Mesrobian et al.); the sleeve reversible (Holloway at page 1, lines 27-35). Not disclosed is a gusset. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway by adding a gusset so as to allow for with larger pots.

As to claims 65 and 66, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose an upper circumferential reach wedged between sleeve (Fig. 25 of Herzog-Mesrobian et al.) and attached to the upper portion (Fig. 25 of Herzog-Mesrobian et al.).

As to claims 67 and 68, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose as sleeve with a clip (Fig. 26 of Herzog-Mesrobian et al.).

As to claims 69 and 70, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose an inner lip with circumferential rim and fold back portion (Figs. 27-30 of Herzog-Mesrobian et al.).

As to claims 72 and 73, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose the profile being frustconically upwardly with width D1 and D1 greater than KXA; downwardly with width D2 and D2 less than KxB (col. 6 lines 25-51 of

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Herzog-Mesrobian et al.); and the additionally extending profile by extending D1 and D2 left-right (col. 6 lines 25-51 of Herzog-Mesrobian et al.).

As to claim 75, Herzog-Mesrobian et al. as modified by Rusert et al. and Holloway further disclose the contracted arc parallel to the first arc and the extended arc parallel to the second arc (col. 7 lines 43-44 of Herzog-Mesrobian et al.).

Response to Arguments

Applicant's arguments with respect to claims that were rejected with the Gilbert reference as part of the rejection have been considered but are moot in view of the new ground(s) of rejection. Those arguments with respect to claims involving rejections with Rusert et al. have been fully considered but they are not persuasive. Applicants' arguments are: (1) Rusert et al. is not analogous art, (2) teaches away from the reference, (3) are attached permanently, (4) the label does not have the contour of the sleeve after the sleeve is placed around a pot, (5) no suggestion to contain a pot, (6) the label does not communicate emotion or advertisement, (7) the ornament is not applied by a user but by a machine, (8) no pocket, and, (9) no second sleeve.

As to argument (1), Examiner considers Rusert et al. to be analogous art because it is a container and capable of holding a flower pot.

As to argument (2), Rusert et al. does not teach away from the invention because it is not used for its method of sealing seams (which Applicants cite) but for its sewn label.

As to argument (3), Examiner considers any label that is sewn or glued to not be attached permanently. With effort, the label can be removed.

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As to argument (4), Examiner consider it inherent that the label will conform to the pot in the sleeve to some degree.

As to argument (5), Rusert et al. is used for its disclosure of a label. Herzog-Mesrobian et al. discloses a sleeve for a flower pot.

As to argument (6), Examiner considers it is obvious to one of ordinary skill in the art that any label can be used to convey any type of information in any way.

As to argument (7), the label of Rusert et al. is capable of being applied by a user and Saetre discloses a label that is applied by a user.

As to argument (8), Bakker discloses a pocket on a sleeve.

As to argument (9), many floral sleeves are known to have multiple layers.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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